

MINUTES OF THE 130TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA

OCTOBER 1, 2003

CALL TO ORDER: Chairman Leo Holzbauer called the meeting to order. A quorum was present.

The following were present at the meeting.

Board Members: Leo Holzbauer, Dwayne Rollag, Francis Brink, and Marian Gunderson. Rodney Freeman and Bernita Loucks were absent.

Department of Environment and Natural Resources: Garland Erbele, Eric Gronlund, Karen Schlaak, Genny McMath, Ron Duvall, Stacy Johnson, Don Stroup, Mark Rath, Jim Goodman, Lynn Beck, Ken Buhler, Tim Schaal, and Gale Selken, all with the Water Rights Program.

Attorney General's Office: Diane Best and John Guhin.

Legislative Oversight Committee: Representative Dale Hargens, Miller, and Senator Marguerite Kleven, Sturgis.

Water Permit No. 6204-3: Mary Clawson, Aberdeen.

Water Permit No. 6399-3: Pat Carlson, Pierre, Marlin Jessen, Holabird, Ross Krull, Keith Krull, Raymond Salathe, David Salathe, Jennifer Mohr, Wade Bronemann, Jerald Bronemann, Ronald Jessen, Troy Brown, Roland Kleinschmidt, and Lee Kleinschmidt, all from Harrold.

Well Driller's License: Dave Mandel, McLaughlin.

Water Permit No. 2480-2: Roland and Donna March, Hot Springs

Water Right No. 3467-3: Rick Arneson, Tulare, Dave Olsen, Hitchcock, Jon Gilbert, Ipswich, Sam Wipf and Paul Wipf, Frankfort.

Findings of Fact, Conclusions of Law and Final Decision for Water Permit No. 6382-3: William St. Clair, Tulare.

Findings of Fact, Conclusions of Law and Final Decision for Water Right No. 3466-3 and Water Permit Application No. 6431-3: Philip Hines, Prior Lake, MN, and Ray Rylance, Watertown.

Other: Pat Cerny, Burke.

APPROVE MINUTES FROM JULY 10, 2003, MEETING: Motion by Rollag, seconded by Gunderson, to approve the minutes from the July 10, 2003, Water Management Board meeting. Motion carried.

DECEMBER MEETING LOCATION: The December 3-4, 2003, board meeting will be held at the Matthew Training Center in Pierre.

2004 MEETING SCHEDULE: The Water Management Board meeting schedule for 2004 is as follows: March 3-4, May 5-6, July 7-8, October 6-7, and December 1-2.

Chairman Holzbauer requested that, if possible, the board meetings not be scheduled for the first day of the month.

ADMINISTER OATH TO DENR STAFF: Chairman Holzbauer administered the oath to DENR staff who intended to testify during the board meeting.

PRESENTATION ON IMAGING OF WATER RIGHTS FILES: Ron Duvall gave a presentation on the Water Rights Program file imaging project.

UPDATE ON WATER PERMIT NO. 6204-3, PUTNEY SLOUGH: Mary Clawson, Game, Fish and Parks, provided the board with a map of Putney Slough showing the five monitoring wells, the stop log structure, and the game production areas. She also presented a copy of the Seepage Monitoring Plan.

Ms. Clawson reported that the water control structure is set at 1275 fmsl . The test wells are monitored to measure hydrologic flow through the system. Ms. Clawson noted that the landowner to the south, John Ries expressed concern that the project would cause the water to flow onto his property. So Game, Fish, and Parks hired Dakota Environmental, Inc. from Huron to complete a Seepage Monitoring Plan. Ms. Clawson stated that monitoring and data collection will continue throughout the next year.

Diane Best stated that notice of this update was provided to Mr. Ries and his attorney.

PERMIT APPLICATION NO. 6399-3, KEITH AND KIP KRULL: Jim Goodman presented his report on the application.

The application proposes to appropriate 3.42 cfs (1535 gpm) from up to three wells approximately 40 feet deep to irrigate 240 acres in Hughes County. This is located about 11 miles south and three miles west of Harrold.

The Chapelle Creek aquifer is an outwash that is under predominantly water table conditions. The aquifer extends into Hyde County to the east and into Hughes County to the Missouri River. This aquifer underlies about 20 square miles and contains an estimated 20,000 acre-feet of water in storage.

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Mr. Goodman stated that at one time a water permit was issued on this land but it was never constructed so it was canceled.

The Water Rights Program monitors two observation wells located near this application. Both of these wells are completed into the Chapelle Creek aquifer. Water levels for the wells show good response to climatic conditions. The water level record indicates that the aquifer is capable of sustaining additional withdrawals. Hydrographs for the two observation wells are included in Mr. Goodman's report.

There is an existing water right (No. 2995-3) authorizing a diversion of 0.56 cfs from a 27-foot deep well for irrigation of 126.1 acres. Mr. Goodman said this water right has reported no irrigation since 1989 and is likely subject to cancellation.

The proposed wells for Application No. 6399-3 would be located about 1/2 mile east of the diversion point for No. 2995-3.

Mr. Goodman concluded the water is available from the Chapelle Creek aquifer. Interference should not be a concern. Mr. Goodman said he believes No. 2995-3 has been abandoned and really does not exist. If the board determines that No. 2995-3 has not been abandoned and does exist, the potential for interference does increase. Even so, there is sufficient spacing between these wells to minimize the impact.

The chief engineer recommended approval of Water Permit Application No. 6399-3, Keith and Kip Krull with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the Irrigation Water Use Questionnaire Qualification.

A group of individuals submitted a petition to intervene in this matter. Roland and Lee Kleinschmidt also requested being a party to the hearing. Mr. Kleinschmidt owns the property where Water Right No. 2995-3 is located. Mr. Goodman stated that he met with Mr. Kleinschmidt a couple times during the last month. He also met with the group of individuals that filed the petition to intervene.

The group's primary concerns are livestock watering, flows in the creek, and whether or not their domestic wells will be affected.

Mr. Kleinschmidt's main concern is potential interference with his wells.

Mr. Goodman said the only use made of this aquifer at this time is domestic use including stock watering.

Diane Best offered DENR Exhibit 1, a summary of Mr. Goodman's work history, and DENR Exhibit 2, the agency file. Both exhibits were accepted into the record.

Pat Carlson, attorney from Pierre, represented the 10 landowners who petitioned in opposition to the permit application. She presented a Notice of Appearance to the board and noted that she is appearing as substitute counsel for Wade Reimers.

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Ms. Carlson said Mr. Goodman indicated that at this point there is some question as to the legitimacy of Mr. Kleinschmidt's water right (No. 2995-3). She asked if that permit could still be valid. Mr. Goodman answered that the Water Management Board could determine that, but that is not the issue. Mr. Goodman said when he reviewed this application and the responses on the irrigation questionnaires that they had not been irrigating, he determined that the permit was subject to cancellation and probably did not exist anymore.

Ms. Carlson asked if the chief engineer's recommendation to the board would be compromised in any way if Water Right No. 2995-3 is found to be valid.

Mr. Goodman answered that the recommendation would not change. There is adequate water in the aquifer to produce the acre-feet requested.

Responding to a question from Ms. Carlson, Mr. Goodman stated that the creeks and streams connected to the aquifer are fed by the aquifer most of the time. During highly wet periods, there can be a movement into the aquifer because the water level in the stream can rise faster than the water level in the ground.

Ms. Carlson asked Mr. Goodman is he is aware that the 10 landowners who intervened in this matter expressed concerns regarding the fact that none of them irrigate, but all of them had a negative experience when the last water permit at one-half cfs was approved; and in some cases the landowners had to haul water.

Mr. Goodman answered that he is aware of the situation. In 1976, Mr. Goodman was the original person that investigated the wells' performance. At that time, he talked to some of the landowners and measured their domestic wells.

Ms. Carlson asked Mr. Goodman if the domestic wells of these landowners are at a depth of 18 feet. Mr. Goodman said those wells vary from 12 to 30 feet deep and the water levels, depending on the season, vary from five to 20 feet.

Ms. Carlson asked if the aquifer is alluvial in nature, is it subject to change. Mr. Goodman answered that the aquifer will be the same but the water levels will change.

Lee Kleinschmidt stated that Mr. Goodman had given him a book regarding the aquifers in Hughes County. Mr. Kleinschmidt asked Mr. Goodman where the book came from. Mr. Goodman answered that it is a Department of Environment and Natural Resources (DENR) and United States Geological Survey (USGS) publication, which was produced as the result of county studies. The publication is entitled *Water Resources of Hughes County, South Dakota*. Mr. Goodman said he cited this publication in his report.

Jerald Bronemann said he lives next to one of the monitoring wells. He asked what the level of the well was in March 2003 and what the level of the well was the last time it was checked. Mr. Bronemann asked what the level of the well was between March and now. Mr. Goodman said

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for HU-81B, which is the well north of Mr. Bronemann's property, the level on September 10, 2003, was 12.3 feet to water and in August it was 13.1 feet to water.

Roland Kleinschmidt said he is the owner of Water Right No. 2995-3. The well has not been used for several years. He said the aquifer where this well is located is only 20 feet deep. Mr. Kleinschmidt asked if the depth of the aquifer varies throughout the area. Mr. Goodman answered that the depth of the aquifer can vary in different areas.

Ms. Best offered DENR Exhibit 3, an updated hydrograph for HU-81 A, and DENR Exhibit 4, an updated hydrograph for HU-81B. The exhibits were admitted into the record.

Ms. Best stated that DENR Exhibit 3 has a post-it note attached that lists the measurement dates.

Roland Kleinschmidt stated that at the time Water Right No. 2995-3 was approved, he understood it was a permanent water permit. He asked if it is automatically canceled since he hasn't used it for eight to ten years.

Chairman Holzbauer said according to the law, if the well is not used for three years the permit is subject to cancellation.

Keith Krull was administered the oath by Chairman Holzbauer. He testified that according to Mr. Goodman's report, there is a very small chance these new wells would affect anyone else's wells. He said his own well is the closest well to the proposed new wells.

Responding to a question from Ms. Gunderson, Mr. Krull stated that his existing wells are about 20 feet deep.

Mr. Brink asked whether Mr. Krull's existing wells are permitted. Mr. Krull answered that they are considered domestic wells, so they are not permitted. He noted that he waters approximately 2,000 head of cattle.

Mr. Brink asked why watering this many cattle would not be considered commercial use.

Eric Gronlund stated that reasonable domestic use is a maximum pump capacity or pump rate of 25 gallons per minute with a daily use not to exceed 25,920 gallons per day, which equates to the 18 gallons per minute continuous use.

Mr. Krull noted that he pumps a maximum of 10 to 12 gallons per minute from several different wells.

Jerald Bronemann was administered the oath by Chairman Holzbauer. He offered Opponent's Exhibits 1 through 4, photographs of Chapelle Creek on the Bronemann property.

Mr. Bronemann said Exhibit 1 shows his only source of water at Chapelle Creek. It is located in one of Mr. Bronemann's pastures. There are a couple springs above the impounded water. About every year water is available. One year in the early 1980's, when Roland Kleinschmidt

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was irrigating, those springs were almost nonexistent. Mr. Bronemann said that year the wells both had to be lowered to the bottom of the aquifer.

Mr. Bronemann said this application proposes three new wells and pumping over six times more water from the aquifer than Right No. 2995-3 was pumping (0.56 cfs). He said he is worried that he will be out of water in his domestic wells, as well as in the springs and the creek.

The four exhibits were accepted into the record.

Troy Brown was administered the oath by Chairman Holzbauer. He testified that he lives next to the Krull's and Kleinschmidt's. Chapelle Creek runs through two of Mr. Brown's pastures. The source of the water for those two pastures is the springs. Mr. Brown stated that in the early 1980's when Roland Kleinschmidt was irrigating, these springs dried up. Mr. Kleinschmidt's permit was for 0.56 cfs and this new permit application is for 3.42 cfs, which is almost six times the amount of water.

Responding to questions from Ms. Carlson, Mr. Brown said he moved onto the property in the early 1960's. Mr. Brown has one domestic well on his property. The well is 15 to 18 feet deep and the water in the well is about eight feet below the surface. The only other source of water available for Mr. Brown's livestock is the springs and Chapelle Creek.

Raymond Salathe was administered the oath by Chairman Holzbauer. He testified that he lives one mile east of Jerald Bronemann. In 1976, the springs on Mr. Salathe's property dried up and he had to pump from the well. Mr. Salathe said his well is 18 feet deep and the pump in all the way to the bottom of the well. In 1980, he had to drill another well to use for livestock watering.

Marvin Jessen was administered the oath by Chairman Holzbauer. He testified that he has lived for 37 years on his place on Chapelle Creek approximately one mile below Chapelle Lake. When he bought the property several surrounding landowners asked Mr. Jessen whether he intended to irrigate because they had problems with the springs in the creek and their wells. Mr. Jessen made the decision not to irrigate. Mr. Jessen said he uses a well that is 36 feet deep and about two miles of creek for livestock watering. In 1981, Mr. Jessen had to drill a new well because the other well went dry. Mr. Jessen noted that his property is approximately 10 miles from the proposed new wells.

Ross Krull was administered the oath by Chairman Holzbauer. He testified that the amount of water in the creek varies depending on precipitation. He said in 1981 the creek went dry. Mr. Krull said the creek is the only source of water for livestock. Mr. Krull said he is concerned about how this proposed irrigation will affect the creek.

Ms. Carlson offered Opponents Exhibit 5, a plat map of Hughes County with each of the opponent's property marked on the map. The exhibit was accepted into the record.

Lee Kleinschmidt was administered the oath by Chairman Holzbauer. He testified that Mr. Goodman had provided him with a map showing all of the aquifers in Hughes County and a book entitled *Water Resources of Hughes County, South Dakota*. The book describes the

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aquifers in their glacial form, size, and structure. There is an approximate 416 feet rise in elevation from the Missouri River Basin in Hughes County going upstream.

Lee Kleinschmidt said when he was irrigating, his domestic wells were affected because it was dry. The surface water in the creek was also affected.

Roland Kleinschmidt read, from page 1 of the book, an explanation of the four major glacial aquifers in Hughes County. He also read, from page 29, an explanation of hydrologic properties of the aquifer, and from page 2, the purpose of the study.

Lee Kleinschmidt offered Opponents Exhibit 6, a map showing the aquifers in Hughes County, and Opponents Exhibit 7, the book entitled *Water Resources of Hughes County, South Dakota*. The exhibits were accepted into the record.

Jerald Bronemann stated that he has two wells on his property, and these two wells are his only source of water.

Chairman Holzbauer asked whether rural water is available in the area.

Mr. Bronemann answered that rural water is available about one mile from his property.

Mr. Brink said the application indicates that the Krulls intend to irrigate 240 acres. He asked what amount is normally applied in an irrigation season.

Jim Goodman stated that "normal use" usually varies with the climate. In a dry year about 16 inches per acre might be applied and in a wet year about six to 10 inches might be applied. That amount varies from east to west across the state because of the types of soils, crops and the climate.

Mr. Brink stated that wells can go dry for any number of reasons.

Mr. Goodman stated that this is a relatively shallow aquifer and it fluctuates seasonally. The landowners have testified that they have had trouble with their wells in the past. Mr. Goodman said they will likely have trouble with the wells in the future, whether there is irrigation in the area or not. The water is already moving in the aquifer, so pumping down stream is not going to affect it.

Mr. Goodman said the average recharge to the aquifer will vary between one and nine inches per year, if the water is available. The average annual recharge to the Chapelle aquifer is about 2,100 acre-feet. At this time, there is no development in this aquifer.

Ms. Gunderson asked if the springs would be dry more years than they are now if the new wells were approved. According to the testimony from opponents of the application, this irrigation permit will dry up those springs sooner and more often than they are now. Mr. Goodman answered that the actual affect from the production wells will be limited to the immediate area of the wells - less than one-half mile. In all likelihood, the creek could be affected near the

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production wells, if there is water in the creek. Mr. Goodman stated that depends on several different things.

Jerald Bronemann said Lee Kleinschmidt told him they irrigated up until 1993.

Mr. Brink stated that according to the irrigation questionnaires submitted, the Kleinschmidts didn't irrigate after 1989.

Mr. Bronemann asked Mr. Goodman whether this new irrigation would affect his wells. Mr. Goodman answered that he does not believe it will affect Mr. Bronemann's wells.

Mr. Bronemann stated that he had trouble with his well in the early 1980's when Mr. Kleinschmidt was irrigating. He said this is the only time he has had trouble with the well.

Roland Kleinschmidt stated that he was pumping water in the years that Mr. Bronemann is referring to. The creek has live springs in it and in the early 1980's those live springs did not dry up during those dry years. If it were affecting Mr. Bronemann's water, it certainly would have affected Mr. Kleinschmidt's springs. Mr. Kleinschmidt stated that even in the 1930's those springs never did dry up in the creek on his land.

Chairman Holzbauer administered the oath to Roland Kleinschmidt.

Ms. Best offered DENR Exhibit 5, Mr. Kleinschmidt's irrigation water use questionnaires showing that the last time he irrigated was 1989. The exhibit was accepted into the record.

Roland Kleinschmidt asked Mr. Goodman whether Right No. 2995-3 has been canceled. Mr. Goodman said the right has not been formally canceled, but he does not believe the Kleinschmidt's can use that well because it has been abandoned. Mr. Goodman noted that is a determination the Water Management Board must make.

Ms. Best said it is clear that there are long periods of non-use and there is a question as to whether the water right has been forfeited and should be canceled. The South Dakota Supreme Court makes it very clear that a water right remains in place until the state has proven that it has not been used in excess of three years on a continuous basis. The water right holder also has the right to rebut that and explain why the right was not used. As a result of that due process hearing, the actual formal cancellation would occur. Ms. Best stated that the department has not initiated cancellation proceedings at this point with respect to Water Right No. 2995-3. The right cannot be canceled today because notice was not given. Ms. Best noted that it is obviously undisputed that the water right has not been used. She said legally Mr. Kleinschmidt still has a right, but he has probably forfeited his right to be able to use the water.

Mr. Kleinschmidt asked whether he still has the authority to irrigate out of that well.

Mr. Guhin stated that if Mr. Kleinschmidt did attempt to irrigate, department staff would bring the matter before the board and there would be a proceeding. The board would then make the

determination as to whether or not the right is canceled. Mr. Guhin noted that Mr. Kleinschmidt is also entitled to bring a declaratory judgment before the board.

Ross Krull asked what will happen if the springs go dry as a result of these new wells. Mr. Krull said if the springs go dry he has to look for another water source.

Mr. Goodman answered that these wells probably won't affect the springs. If the springs were to go dry, there is no way to prove that the new wells are the cause.

Board discussion took place and Chairman Holzbauer requested board action.

Motion by Gunderson, seconded by Brink, to approve Water Permit Application No. 6399-3, Keith and Kip Krull with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the Irrigation Water Use Questionnaire Qualification. Motion carried.

Mr. Guhin will prepare the Findings of Fact, Conclusions of Law, and Final Decision.

WELL DRILLERS LICENSE FOR DAVID S. MANDEL: Ken Buhler reported that David Mandel Well Drilling submitted an application for a South Dakota Well Driller's License. The chief engineer recommended denial of the application due to lack of documentation on the application showing at least five years of experience and qualifications in properly completing wells as required by ARSD 74:02:01:42.03.

Mr. Buhler stated that in 2002 Mr. Mandel bought the company and a drill rig from Joe Hartman, who is a licensed well driller in Mobridge. Mr. Mandel has been working under Mr. Hartman's license and his supervision since that time. Mr. Buhler said Mr. Mandel has about three years of drilling experience.

David Mandel was administered the oath by Chairman Holzbauer. He testified that he bought the business from Joe Hartman with the understanding that Mr. Mandel would secure his own well drillers license by the end of 2003. Mr. Mandel stated that when he bought the business he was not aware that he needed five years of experience in order to be eligible for a well drillers license.

Responding to a question from Mr. Rollag, Mr. Mandel said he has approximately 2 ½ years of experience.

Responding to questions from Ms. Best, Mr. Mandel stated that he has drilled about seven wells in South Dakota. He explained the differences in the procedure for grouting in North Dakota and South Dakota. The wells Mr. Mandel has drilled in South Dakota are between 140 to 265 feet deep. The majority of these wells are in the McLaughlin and McIntosh area. Well completion reports for these wells were filed by Mr. Hartman with DENR. Mr. Mandel stated that he does not currently have a North Dakota well drillers license, but he intends to obtain one by the end of the year. North Dakota does not require five years of experience, but the applicant has to take a six-hour course and a test in order to obtain a license.

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Responding to questions from Mr. Brink, Mr. Mandel stated that Mr. Hartman is currently a licensed well driller, but he has moved to Florida and no longer intends to keep his South Dakota license current. Mr. Mandel and Mr. Hartman had an agreement that Mr. Mandel would obtain his own well drillers license by the end of 2003.

Ms. Gunderson asked whether there is any other well driller in the area that would be willing to oversee Mr. Mandel's well drilling until he has five years of experience. Mr. Mandel answered there is not.

Mr. Holzbauer asked when Mr. Mandel became aware of the five years of experience requirement. Mr. Mandel stated that Ken Buhler made him aware of it when he contacted the department regarding applying for his own license.

Mr. Rollag asked how expensive it is to purchase a rotary drill rig. Mr. Mandel answered that he paid \$90,000 for his rig and had to refurbish it after he bought it.

Mr. Rollag asked if there is any way the board could grant a temporary operating license.

Mr. Guhin stated that there is not. He asked Ms. Best to read the regulation regarding well drillers licenses into the record.

Ms. Best read the following: ARSD 74:02:01:42.03. Documentation of experience required for new license applications. In addition to the requirements of § 74:02:01:42 to 74:02:01:42.02, inclusive, all applications for a new well driller license shall include documentation by the well driller's license representative showing at least five years of experience and qualifications in properly completing specified types of wells to be drilled and constructed. Other documentation in lieu of experience may be submitted showing qualifications and ability to properly complete specified types of wells to be drilled and constructed.

Ms. Gunderson noted that Mr. Hutmacher told the board at a previous meeting that the SD Well Drillers Association is looking at putting on classes as an additional layer of granting a license.

Mr. Buhler stated that at this time the board requires four hours of continuing education credits to maintain a well drillers license. The SD Well Drillers Association is doing their best to provide continuing education for the industry.

The National Ground Water Association has a series of examinations that an individual can take, but at this time South Dakota law does not require a well driller to take these exams.

Mr. Rollag asked if there is any distinction between well drillers that operate a cable tool rig or a hydraulic rig. Mr. Buhler answered there is not. Mr. Rollag stated one thing he would consider to be an extenuating circumstance in this case is the fact that Mr. Mandel is an operator of a hydraulic rotary rig, which is a lot more complicated than a cable tool rig. The operator has to have a lot more knowledge to operate a rotary rig than he does to operate a cable tool rig.

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Mr. Brink said he is interested in whether a well driller has the knowledge of South Dakota aquifers and well drilling procedures.

Ms. Gunderson said she believes Mr. Mandel was misled by Mr. Hartman.

Ms. Best asked whether Mr. Mandel had any additional information that would explain his experience in terms of his knowledge of the aquifers, equipment, and well drilling procedures.

Mr. Mandel stated that he rebuilt the rig so he can drill with air and water injection. There is a nine gallon per minute water pump on the rig. The knowledge he has of the aquifers was obtained by working with Mr. Hartman.

Chairman Holzbauer requested board action.

Motion by Brink, seconded by Rollag, to deny issuance of a SD Well Drillers License to David S. Mandel based on the lack of documentation by the applicant showing at least five years of experience and qualifications in properly completing wells.

Mr. Brink asked if the board would entertain another application from Mr. Mandel if he were to come up with additional information.

Ms. Gunderson said he still would not have five years of experience.

Ms. Best stated that one intervening event that will take place between now and the December board meeting is the testing in North Dakota.

Ms. Gunderson asked whether Mr. Mandel could drill in South Dakota under a North Dakota license.

Ms. Best said Mr. Mandel cannot drill in South Dakota under a North Dakota license. Mr. Mandel provided testimony today that an additional qualification he plans to add to his portfolio between now and the December board meeting is the North Dakota license.

Mr. Guhin read 74:02:01:42.03 Documentation of experience required for new license applications. Mr. Guhin said Ms. Best is suggesting that if Mr. Mandel successfully completes the North Dakota test and there is testimony that the North Dakota test is substantive and meets the qualifications that South Dakota requires, then maybe the board would want to take that as "other documentation."

Mr. Brink withdrew his motion, and Mr. Rollag withdrew his second.

Motion by Brink, seconded by Rollag, to defer this matter until the December 2003, board meeting to allow the applicant more time to provide the board with additional information regarding qualifications. Motion carried.

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification

The well(s) approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification No. 1

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

Well Construction Rule Qualification No. 2

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

Irrigation Water Use Questionnaire Qualification

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Low Flow Qualification

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: See attachment.

WATER PERMIT APPLICATION NO. 2480-2, ROLAND, DONNA, TONY & TERRY MARCH: Don Stroup presented his report on the application.

The application proposes to appropriate an additional 1.29 cfs from the Cheyenne River and irrigate an additional 19.9 acres over those amounts authorized by Water License No. 1882-2. The application also proposes to change the Water License No. 1882-2 diversion point. Water License No. 1882-2 entitles the diversion of 0.60 cfs from the Cheyenne River to irrigate 49.4 acres with a priority date of May 29, 1984. The application proposes to install a center pivot that will make a two-thirds rotation irrigating a total of 69.3 acres. The proposed annual period of use is April 1 through October 31. The requested total diversion rate of 1.89 cfs for 69.3 acres is greater than the South Dakota statutory limit of 1 cfs per 70 acres.

The chief engineer recommended approval of Application No. 2480-2 with the Irrigation Water Use Questionnaire Qualification and the following qualifications:

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1. Pursuant to SDCL 46-5-6, Water Right No. 1882-2 and Water Permit No. 2480-2 combined, authorize a maximum diversion rate of 1.89 cfs for the irrigation of 69.3 acres.
2. Water Permit No. 2480-2 does not authorize diversion from the Cheyenne River in excess of 0.60 cfs for irrigation of 49.4 acres (established by Water Right No. 1882-2) at any time flow at the USGS Cheyenne River Angostura Dam gauging station (06401500) is less than 2.5 cfs. Diversions under this permit shall be in accordance with any written orders issued by the chief engineer.

Mr. Stroup stated that the department did not receive any opposition to this application. However, a letter was submitted by Roland Piper, a neighboring landowner. Mr. Piper states in his letter that he is not against the water permit, but he believes the March's should have to apply for a whole new water right and the old permit should be canceled for non-use. Mr. Stroup noted that he reviewed the irrigation questionnaires and found that No. 1882-2 has been used for irrigation.

Roland March was administered the oath by Chairman Holzbauer. He testified that he did not irrigate during some years in the 1990's because it was too wet. Mr. March stated that he bought a Nelson gun and it worked alright but was not really efficient due to the elevation and the pressure. Mr. March intends to replace the gun with a center pivot that will make a two-thirds rotation.

Motion by Rollag, seconded by Brink, to approve Water Permit Application No. 2480-2, Roland, Donna, and Tony March, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 6427-3, MARK GRASSE: Don Stroup presented his report on the application.

The application proposes to appropriate a total of 50 acre-feet of James River water annually for fish and wildlife propagation at a pumping rate of 6.0 cfs twice a year. Water would be pumped from the river in the spring and fall of each year into an adjacent 25-acre shallow impoundment.

Mr. Stroup noted that hydrographs show there is enough flow in the river under normal conditions. During the late summer and early fall months, the James River cannot be considered a reliable source of water. During extended periods of diminished precipitation, James River Water Rights could be subject to Shutoff Orders by the chief engineer.

The chief engineer recommended approval of Application No. 6427-3 with the following qualifications:

1. Diversion of water from the James River shall be in accordance with the following criteria:

- When pumping from the James River, low flows as needed for downstream domestic use, including livestock water and prior water rights must be bypassed.
 - From March 1 to March 31, diversions from the James River are authorized only when the flow at the Huron, SD, Third Street Dam is at least 29 cfs while pumping under this permit.
 - From April 1 to June 30, diversion from the James River area authorized only when the flow at the Huron, SD, Third Street Dam is at least 63 cfs while pumping under this permit.
 - From July 1 to October 1, diversions from the James River are not authorized unless by written orders issued by the chief engineer.
 - Diversions under this permit shall be in accordance with any written orders issued by the chief engineer.
2. Water Permit No. 6427-3 authorizes diversion into a shallow basin with a storage capacity of 25 acre-feet of water. Total annual diversion per year from the James River may not exceed 50 acre-feet of water.

Mr. Stroup noted that the department received no opposition to this application.

Motion by Gunderson, seconded by Brink, to approve Water Permit Application No. 6427-3, Mark Grasse, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 6436-3, CITY OF WATERTOWN MUNICIPAL GOLF COURSE: Don Stroup presented his report on the application.

The application proposes to increase the withdrawal rate and the point of diversion of Lake Kampeska water authorized by Water Right No. 6103-3. The application proposes a 2.34 cfs additional appropriation, increasing the total combined withdrawal rate to 4.01 cfs (1800 gpm) from the lake and changing the diversion point from the NW $\frac{1}{4}$ NW $\frac{3}{4}$ Section 27 to the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 22, all in T117N, R53W. The applicant is requesting a diversion rate greater than the statutory limitation of one cfs per 70 acres irrigated with an annual volume no greater than three acre-feet delivered on the land. No increase over the 159.5 irrigated acres is requested.

Pursuant to SDCL 46-5-6, the Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land. Mr. Stroup noted that the city is irrigating the golf course eight hours per day, so in effect is only using a diversion rate of approximately 1.34 cfs per day.

Statistical analyses of Lake Kampeska water surface elevation data indicated there is reasonable expectation that non-appropriated water will be available in the lake, except during prolonged

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periods of diminished precipitation. Mr. Stroup said there is reasonable expectation that this application's total diversion of 4.01 cfs for irrigating the golf course will not infringe on prior appropriations from Lake Kampeska. The proposed change of diversion point should not infringe on any prior appropriations.

Diversions from the lake may be subject to shutoff orders as deemed necessary by the chief engineer during prolonged periods of diminished precipitation.

The chief engineer recommended approval of Application No. 6436-3, city of Watertown, with the Irrigation Water Use Questionnaire Qualification and the following qualifications:

1. Pursuant to SDCL 46-5-6, which allows a greater diversion rate if the method or irrigation, time constraints, or type of soils so requires, Water Right No. 6103-3 and Permit No. 6436-3, combined, authorize a maximum diversion rate of 4.01 cfs from Lake Kampeska for irrigation of 159.5 acres. Irrigation of the golf course is limited to eight hours per day. The annual volume shall not exceed three acre-feet of water per acre per year.
2. South Dakota Department of Game, Fish and Parks holds Vested Water Right No. 890-3 for storage of water in Lake Kampeska. Diversions authorized by Right No. 6103-3 and Permit No. 6436-3 shall be limited when the lake level is at or below elevation 1714.5 feet mean sea level to irrigation of only the golf course greens and tees.
3. Diversions of water from Lake Kampeska to the pond with a five acre-foot storage capacity as authorized by Water Right No. 6103-3, and shall be limited to the amount necessary to maintain the pond's water level.

Mr. Stroup noted that the department received no opposition to the application.

The department did receive a letter from the Department of Game, Fish and Parks stating that they had no objection to the application as long as diversions are limited to irrigation of only the golf course greens and tees when the lake level is at or below elevation 1714.5 cfs.

Motion by Brink, seconded by Rollag, to approve Water Permit Application No. 6436-3, City of Watertown Municipal Golf Course, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 6425-3, HARRY THOMAS: Jim Goodman presented his report on the application.

The application proposes to appropriate 0.89 cfs from an existing well 42 feet deep to irrigate 60 acres in Sully County. This well also supplements irrigation authorized by Water Right Nos. 1381-3 and 1927-3, which authorize a total of 2.0 cfs from a different well to irrigate 184 acres. If approved, this application combined with Water Right Nos. 1381-3 and 1927-3 will appropriate a total of 2.89 cfs for the irrigation of 244 acres.

Mr. Goodman stated that the Water Rights Program became aware of a discrepancy in the licensing of Mr. Thomas' original acreages and irrigation wells. It became apparent that this acreage and diversion rate had been left off the original license.

The Highmore Blunt aquifer is a surficial outwash which is under water table conditions at this site. The aquifer underlies 20,300 acres and contains an estimated 30,450 acre-feet of recoverable water in storage in Sully County. The aquifer extends into Hughes County to the south and into Hyde County to the east. Ground water movement is probably from northeast to southwest across the area of this application.

This is an existing well which has been used for many years. Very little information is available concerning the construction of this well.

The Water Rights Program monitors two observation wells located within four miles of this application. Hydrographs for these wells are included in Mr. Goodman's report.

Mr. Goodman said water is available from the Highmore Blunt aquifer and he does not expect significant drawdown. Approval of this application will allow the licensing of this system to reflect how the system is built and used.

Mr. Goodman noted that there are no other existing water permits/right in this area.

The department received a letter from Ruth Bayne, Harrold, SD, stating that she is not opposed to Mr. Thomas' application if there is sufficient water in the aquifer for use by her neighbors and herself during drought.

The chief engineer recommend approval of Application No. 6425-3 with the Well Interference Qualification and the Irrigation Water Use Questionnaire Qualification.

Motion by Gunderson, seconded by Brink, to approve Water Permit Application No. 6425-3, Harry Thomas, subject to the qualification set forth by the chief engineer. Motion carried.

CANCELLATION CONSIDERATIONS: Eric Gronlund reported that 11 rights/permits were scheduled for cancellation. The right/permit owners on the cancellation list were notified of the hearing and the reasons for cancellation.

The only letter of opposition to cancellation was submitted by Spink Colony. Mr. Gronlund noted that the board would hear this matter separately from the others on the cancellation list.

The following were recommended for cancellation for the reasons listed.

Water Right No. 708-1 filed by Dale Briscoe now owned by Dorothy Carmichael;
abandonment/forfeiture

Water Right No. 961-2 filed by Louis Merchen now owned by Alvin Merchen;
abandonment/forfeiture

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Water Right No. 1202-3 filed by Lynn Metzinger; abandonment/forfeiture
Water Right No. 1577-3 filed by Marv Schlomer dba M&M Farms; abandonment/forfeiture
Water Right No. 1868-3 filed by Dennis and Sharon Zimbrink, abandonment/forfeiture
Water Right No. 2045-3 filed by Richard Walth now owned by Allen Walth and Marv Schlomer; abandonment/forfeiture
Water Right No. 3071-3 filed by Mark, Robin and Steven Heeren; abandonment/forfeiture
Water Right No. 3577A-3 filed by Leslie Bohlmann; abandonment/forfeiture
Water Right No. 3577B-3 filed by Jerry Bohlmann; abandonment/forfeiture
Water Permit No. 6039-3 filed by Ray and Marlys VanderWal dba Volga Dairy, now owned by Frido VerPaalen dba Volga Dairy; non-construction

Motion by Gunderson, seconded by Brink, to cancel the 10 water rights/permits for the reasons listed. Motion carried.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION IN THE MATTER OF CANCELLATION OF WATER RIGHT NO. 3466-3 AND NEW WATER PERMIT

APPLICATION NO. 6431-3, PHILLIP HINES: Diane Best stated that she and Mr. Rylance have agreed to a continuance until the December 2004 board meeting. She noted that the proposed Findings of Fact, Conclusions of Law and Final Decision drafted by Mr. Guhin were sent to Mr. Hines but not Mr. Rylance. For Application No. 6431-3, Ms. Best used the same service list to file a pre-hearing brief, so Mr. Rylance did not receive this information.

Motion by Gunderson, seconded by Brink, to continue these matters until the December 2004 Water Management Board meeting. Motion carried.

CANCELLATION OF WATER RIGHT NO. 3467-3, SPINK COLONY: Don Stroup presented information on the proposed cancellation of Water Right No. 3467-3.

Water Right No. 3467-3 authorizes diversion of 1.95 cfs from ground water to irrigate 136 acres from a well in the Tulare East James Aquifer.

Spink Colony submitted the permit application in October 1976. In December 1976, the department received a letter stating that the water was marginal for use on the soils intended to be irrigated. The application was placed on deferred status in February 1977. In November 1989, the application was removed from deferred status and licensed.

Mr. Stroup stated that the colony submitted Irrigation Water Use Questionnaires from 1989 through 2002. In 1990, the Irrigation Water User Questionnaire indicated that there were too many minerals in the water. From 1995 through 2002, the Irrigation Water Use Questionnaires indicate that the colony did not irrigate because of the poor water quality.

In 1991, the colony provided the Water Rights Program with an Irrigation Management Plan outlining several procedures for treating marginal soils.

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In 1992, the Water Rights Program replied to Huron Drilling's request to construct a test well for the colony and transfer acres and the well location for No. 3467-3. In its letter, the Water Rights Program stated its concern about the validity of the water right after three years of non-use and denied the request.

In 2003, Mr. Stroup visited the colony regarding the status of No. 3467-3. Mr. Wipf indicated at that time that he thought the water right had already been cancelled and that the soil had been treated lately and could again be irrigated from the well.

The chief engineer recommended cancellation of Water Right No. 3467-3 due to abandonment/forfeiture. Spink Colony submitted a letter in opposition to the cancellation, stating they had found a way to make the water useable through treatment of the soil with a mix put together by Prescription Agronomics.

Mr. Stroup noted that as provided in State Regulation, legal excuses for non-use of water include, but are not limited to, the following:

1. Unavailability of water to satisfy a permit, right, or vested right,
2. Legal proceedings which prevent the use of water, and
3. Water use under existing climatic conditions would result in a waste of water.

Mr. Guhin said the board needs to determine whether there are three years that there is no legal excuse for non-use of the water and whether the water quality being bad is considered legal excuse.

Mr. Rollag asked if the colony can apply for a new permit if the board cancels this permit today. Mr. Stroup answered that the colony can apply for a new permit, but the source is the Tulare East James Aquifer, which is fully appropriated.

Ms. Gunderson stated that poor water quality is not a reason for legal excuse.

Ms. Best stated that poor water quality is not a specifically listed legal excuse. According to board rule, the board can determine whether other excuse exists for failure to use the water for a period of time. Ms. Best stated that it is a case of first impression as to whether the soil/water compatibility is an adequate legal excuse for failure to use the water during the period of forfeiture. One issue to look at is whether the soil is capable of being rehabilitated. If it is not capable of being rehabilitated, it is not capable of being irrigated. The other issue is whether the soil/water problem has been present throughout the entire period of use. To the best of the staff's knowledge, the problem has been present throughout the period of non-use.

Mr. Guhin stated that the board has to arrive at some rule that reflects what real legal excuse is.

Ms. Best noted that the 1991 Spink Colony Irrigation Management Plan was presented to the South Dakota Conservation Commission. She asked that the Water Management Board take administrative notice of that document.

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Chairman Holzbauer asked that the record reflect that the Water Management Board has taken administrative notice of the document.

Richard Arneson, Prescription Agronomics, was administered the oath by Chairman Holzbauer. He testified that the colony conducts soil samples on their land every year and the colony recently started testing the water.

Jon Gilbert, Prescription Agronomics, was administered the oath by Chairman Holzbauer. He testified that Prescription Agronomics was formed in 2001. The company does water treatment for irrigating land when the water has a high pH, has high salt level, etc. The company has other customers in the area of the colony that had the same type of problems the colony is having. Prescription Agronomics was able to use a sulfuric acid based fertilizer to lower the pH in the soil and reduce the salts. This is common practice in several areas of the United States.

Responding to a question from Mr. Holzbauer, Mr. Gilbert stated that a sulfuric acid based product is put down in the fall to acidify the soil. By doing this, the pH of the water will be lowered freeing up the sodium in the water so that it can pass down through the root zone. This is simply speeding up a process that normally would take 10 years, but Prescription Agronomics can turn it around a lot faster.

Mr. Rollag asked how long this technology has been used. Mr. Gilbert answered that the technology has been used for about 20 years.

Responding to questions from Ms. Gunderson, Mr. Gilbert stated that the product is applied through pivots using pumps that are specifically designed for this procedure. The product has to be applied every year because if you don't treat high pH water it will start building up salt again.

Ms. Best asked what the soil type is in this area. Mr. Gilbert answered that he does not know.

Ms. Best asked how many inches of water the colony anticipates putting on the soil while applying the product. Mr. Gilbert said it will probably be between five and 10 gallons per acre, depending on how many bicarbonates are present.

Ms. Best asked what the recommended irrigation practices are in terms of how much water to apply and the frequency of irrigation in order to get the product working through the soil. Mr. Gilbert answered that it would depend on weather conditions.

Paul Wipf, Spink Colony, affirmed to tell the truth. He stated that the colony has been working with Prescription Agronomics to bring the soil back to normal.

Ms. Gunderson asked Mr. Wipf if he is aware that the colony has not irrigated this land for three or more years. The law states that the Water Management Board cannot affirm the colony's permit. Mr. Wipf said the colony was under the impression that they had five years to do something. After five years, the colony made a trip to Pierre, and someone with the Water Rights Program told the colony they only had three years. Mr. Wipf said the colony thought they had already lost the permit.

Ms. Best stated that the water rights permit has not been cancelled, but she believes the South Dakota Department of Agriculture cancelled the colony's soil water compatibility permit. She asked the Water Management Board to acknowledge that Jim Stukel was the person in charge of the soil water compatibility permits for the Department of Agriculture in the 1990's. Ms. Best stated that the soil water compatibility permit authority was repealed by the legislature so the colony could have irrigated because the soil/water compatibility permit was no longer required.

Ms. Gunderson said according to the Irrigation Water Use Questionnaire, the colony has not considered irrigating since 1988, when the pivot was moved off the quarter due to poor quality water. So according to the law, the Water Management Board is required to cancel Permit No. 3467-3.

Mr. Guhin said the colony is not represented by counsel, but if they did have counsel they might argue that the water was unavailable during that period because it was of poor quality.

Ms. Gunderson stated that water was available during that time period and according to the Irrigation Water Use Questionnaires submitted by the colony, there were more than three years of continuous non-use.

Chairman Holzbauer requested board action.

Motion by Gunderson, seconded by Rollag, to cancel Permit No. 3467-3 due to abandonment and/or forfeiture.

Mr. Rollag stated that the ramifications of the legal excuse of soil/water compatibility should be investigated.

Chairman Holzbauer said that is no longer an issue for a permit because the legislature repealed it.

The motion carried.

John Guhin will prepare the Findings of Fact, Conclusions of Law and Final Decision.

WATER PERMIT APPLICATION NO. 6405-3, ROBERT AND RICHARD KREBER: Ms.

Best noted that this application was opposed by Edward Kreber. The parties requested and were granted a continuance at the last board meeting in order to work out an agreement amongst them. The parties were successful in coming to an agreement, so the application is no longer contested.

Stacy Johnson presented her report on the application.

The application proposes to appropriate 2.0 cfs from an existing Missouri River diversion point (authorized by Water Right No. 3586-3) located near the center of the S 1/2 SE 1/4 Section 10 and Snatch Creek (Missouri River backwater) located in the NW 1/4 SE 1/4 Section 10, T93N-R59W to irrigate 120 acres.

The project is located approximately five miles northeast of Springfield.

The source of water is the Missouri River, which is known to have ample supplies of unappropriated water available. Ms. Johnson said it is unlikely that the applicant will adversely impact any downstream water rights/permits.

The applicant is requesting more than one cfs per 70 acres. SDCL 46-5-6 and 46-5-6.1 allows water to be taken at a rate greater than one cfs per 70 acres specifically from the Missouri River for irrigation.

The chief engineer recommended approval of the application with the Irrigation Water Use Questionnaire Qualification and the following qualification:

Pursuant to SDCL 46-5-6, which allows for a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 6405-3 authorizes a maximum diversion rate of 2.0 cfs for the irrigation of 120 acres with an annual volume not to exceed two acre-feet of water per acre per year.

Ms. Best provided the board with a copy of the agreement between the three parties.

Motion by Gunderson, seconded by Brink, to approve Water Permit Application No. 6405-3, Robert and Richard Kreber, subject to the qualifications set forth by the chief engineer. Motion carried.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION IN THE MATTER OF WATER PERMIT NO. 6382-3, WILLIAM ST. CLAIR: Ms. Best requested that the board delay action on the Findings of Fact, Conclusions of Law and Final Decision until the December 2003, meeting. She noted that Eric Gronlund contacted Mr. St. Clair regarding delaying this matter and he had no objections.

Chairman Holzbauer announced that this matter will be deferred until the December 2003 meeting.

WATER PERMIT APPLICATION NO. 1801-1, HARRY EINFALT: Mark Rath presented his report on the application.

The application proposes to appropriate 4.08 cfs from a dugout located on a natural drainage way to irrigate 282.6 acres approximately 14 miles northeast of Belle Fourche in Butte County.

The source of water for this project is from a dugout located on a drainage way that catches return flows from the Belle Fourche Irrigation District and local runoff. The drainage way is a tributary to Indian Creek, which is a tributary to Horse Creek, which is a tributary to the Belle Fourche River. There is a gauging station located on Indian Creek upstream of this project. The second gauging station is located on Horse Creek prior to it dumping into the Belle Fourche River. Hydrographs for these gauging stations are included in Mr. Rath's report.

Mr. Rath noted that the Water Rights Program received a letter from the Bureau of Reclamation concurring with the chief engineer's recommendation for approval under the condition that Mr. Einfalt understands that he may not order irrigation water from the Belle Fourche Irrigation District and move it to his dugout and use the water to irrigate Class 6 land.

The chief engineer recommended approval of Application No. 1801-1 with the Low Flow Qualification and the Irrigation Water Use Questionnaire Qualification.

Motion by Gunderson, seconded by Brink, to approve Water Permit Application NO. 1801-1, Harry Einfalt, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 1800-1, HARRY EINFALT: Mr. Rath presented his report on the application.

The application proposes to appropriate 1.86 cfs from a dugout/dam located on a drainage lateral to irrigate 130 acres using a center pivot.

The source of water is primarily from a dugout/dam located on a drainage way that catches runoff from the Belle Fourche Irrigation District and some local runoff. The open drain is a tributary to Owl Creek. Owl Creek runs into the Belle Fourche River. There are no existing gauging stations located on Owl Creek or this tributary to Owl Creek. There is a USGS gauging station currently being operated on Horse Creek, the next major stream east of Owl Creek.

Mr. Rath stated that this dugout is proposed to be constructed on a drainage lateral, which is a structural component of the Belle Fourche Irrigation District.

The Bureau of Reclamation submitted a letter to the Water Rights Program stating that Mr. Einfalt is required to apply to the Belle Fourche Irrigation District for a special use permit to allow any construction activities or use of water to occur within the open drain right-of-way.

The chief engineer recommended deferral of Application No. 1800-1 because the proposed dugout/dam is to be located on an open drain, which is a structural component of the Belle Fourche Irrigation Project. A special use permit will need to be obtained from the Bureau of Reclamation to construct works on their property. This application should be deferred for a period of one year to allow adequate time for the applicant to obtain the proper authorization from the Bureau of Reclamation. This application can be scheduled for board action anytime upon receiving Bureau authorization or will be rescheduled for board action in one year. At that time the chief engineer may revise the recommendation to be for approval, denial or continue the deferred status of the application.

Motion by Gunderson, seconded by Rollag, to defer Water Permit Application No. 1800-1, Harry Einfalt, for a period of one-year. Motion carried.

WATER PERMIT APPLICATION NO. 1707C-1, CITY OF SPEARFISH: Ken Buhler presented his report on the application.

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In 2000, Water Permit No. 1707-1 was issued to Frawley Ranches, Inc. for a planned unit development. The water permit was subsequently divided and reissued as Water Permit Nos. 1707A-1 and 1707B-1 to reflect the transfer of a portion of the appropriation to the city of Spearfish.

Water Permit No. 1707C-1 purposes to change the use of water authorized by Water Permit No. 1707B-1 from suburban housing development, commercial and domestic uses to municipal use by the city of Spearfish.

Mr. Buhler stated that water is available. This amendment will not impair existing rights.

The chief engineer recommended approval of Water Permit Application No. 1707C-1 with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the following qualifications:

1. In accordance with SDCL 46-1-14, Permit No. 1707C-1 is issued for a 20-year term as established by Water Permit No. 1707-1. Pursuant to SDCL 46-2A-21, the 20-year term may not be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to 20 years. Permit No. 1707C-1 may also be cancelled for non-construction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5,37, 46-5-37.1, and ARSD 74:02:01:37
2. Permit No. 1707C-1 authorizes a total annual diversion of 233.5 acre-feet of water annually for municipal use.
3. The city of Spearfish shall report to the chief engineer annually the amount of water withdrawn each year from the Madison Formation for municipal use.

Ms. Gunderson asked if the housing and commercial development is still planned. Mr. Buhler stated that Permit No. 1707-1 was for four wells. Permit No. 1707C-1 is for just one of those four wells. The other three wells are intended for use at the planned development.

Mr. Buhler noted that the amendment will not change the priority date of January 6, 2000, and it will not extend the time all construction is to be completed, which is December 6, 2005.

Roger Tellinghuisen, attorney for Frawley Ranches, and Don Mueller, the planning administrator for the city of Spearfish, participated via speaker phone.

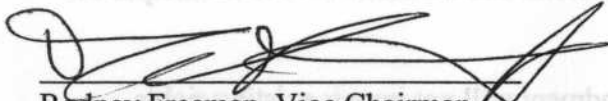
Mr. Tellinghuisen stated that water lines are being laid from the old city limits of Spearfish and to Exit 17. He noted that the housing and commercial portions of this project are still planned. This development will be connected to the city of Spearfish water and sewer, so Frawley Ranches is requesting approval of transferring a portion of its water right to the city of Spearfish.

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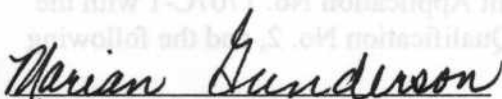
Motion by Brink, seconded by Gunderson, to approve Water Permit No. 1707C-1, city of Spearfish, subject to the qualifications set forth by the chief engineer. Motion carried.

ADJOURN: Chairman Holzbauer declared the meeting adjourned at 2:50 p.m. CDT.

Approved this 3rd day of December, 2003.



Rodney Freeman, Vice Chairman



Marian Gunderson
Temporary Secretary

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Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
1791-1	Bart Burdick	Baker MT	HR	1.8 cfs	126 acres	Box Elder Creek	If, iq, 1 special
1792-1	DDRF, Inc.	Spearfish	LA	0.18 cfs	shd	2 wells-Minnelusa Formation	wi
1793-1	Kaski Homes, Inc.	Piedmont	MD	0.17 cfs	shd	1 well-Inyan Kara Formation	wi
1794-1	Vita Royal Products, Inc.	Piedmont	MD	0.17 cfs	commercial	1 well-Inyan Kara Formation	wi
1795-1	Sandy Limpert	Buffalo	HR	40 AF	fwp & live	Runoff	If, 1 special
1796-1	Dennis or Ann Beckham	Piedmont	MD	0.1 cfs	com,shd,dom	1 well-Inyan Kara Formation	wi
1797-1	Jim Johnson	Belle Fourche	HR	65.4 AF	fwp & live	Runoff	If, 1 special
1798-1	William Pothast	Eagle Butte	ZB	38.2 AF	fwp, rec, live	Runoff	If, 1 special
2505-2	Lakeview Christian Ref.	Valentine NE	TD	0.033 cfs	institutional	1 well - Ogallala Formation	wi
2506-2	Robert LeMere	Hill City	PE	0.04 cfs	commercial	1 well-Crystalline Rock	wi
2507-2	Hani Shafai	Rapid City	PE	0.067 cfs	shd	1 well-Deadwood Formation	wi
2508-2	Steve Halverson	Pierre	LY	76.40 AF	fwp, rec, live	Runoff	If, 1 special
2511-2	Black Hills Health & Ed	Hermosa	CU	0.20 cfs	institutional	6 wells-Minnelusa Formation	wi
2047A-3	City of Sioux Falls	Sioux Falls	MA	No add'l	municipal	1 well-Big Sioux Aquifer	wi, 5 special
2211A-3	Western Trust Company	Watertown	CD	No add'l	no add'l	4 AF dugout	iq, 3 special
2390A-3	Huron Colony	Huron	BD	No add'l	no add'l	James R. - transferring acreage	iq, 2 special
6408-3	Gordon Bleeker	Castlewood	HM	3.56 cfs	280 acres	4 wells-Big Sioux:North	wi, wcr, iq
6409-3	Ronald Jongeling	Castlewood	HM	1.78 cfs	160 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
6410-3	Ronald Jongeling	Castlewood	HM	1.78 cfs	160 acres	1 well-Big Sioux :Brookings	wi, wcr, iq
6411-3	Brad Jongeling	Castlewood	HM	1.78 cfs	160 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
6412-3	Todd Jongeling	Castlewood	HM	1.78 cfs	160 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
6413-3	Percy Tjeerdsma	Springfield	BH	1.78 cfs	160 acres	1 well-Choteau Tyndall Aqu	wi, wcr, iq
6415-3	Hoffman Farms	Bowdle	ED	1.78 cfs	130 acres	3 wells-Bowdle Edmunds Aqu	wi, wcr, iq
6418-3	Paul D Nelson	Gettysburg	SU	56.90 AF	fwp	Runoff & 1 well-Inyan Kara	wi, 2 special
6419-3	Dakota Granite Company	Milbank	GT	2.11 cfs	industrial	Dewatering quarry hole	3 special
6420-3	Madison Golf/Country Clb	Madison	LA	0.67 cfs	50 acres	1 well-Howard Aquifer	wi,wcr,iq, 1 special
6421-3	Keith Ebbers	Castlewood	HM	1.79 cfs	125 acres	1 well-Big Sioux Brookings	wr,wcr,iq, 1 special
6422-3	Dakota Wesleyan U.	Mitchell	DN	0.22 cfs	37 acres	2 wells-Codell Aquifer	wi, iq, 1 special
6423-3	Sioux River Ethanol	Hudson	LN	1.78 cfs	industrial	4 wells-Big Sioux:South Aqu.	wi, wcr, 1 special
6424-3	Claremont Hutterian Breth.	Castlewood	HM	1.14 cfs	80 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
6426-3	Terrill Wheeler	Raymond	CK	2.22 cfs	299.6 acres	2 well-Altamont Aquifer	wi, wcr, iq
6428-3	Kenneth Thorstenson	Selby	CA	1.86 cfs	130 acres	1 well-Selby Aquifer	wi, wcr, iq
6429-3	Town of Goodwin	Goodwin	DU	0.67 cfs	28 acres	1 well-Prairie Choteau	wi, wcr,iq,2 special
6430-3	Sutton Bay Golf, LLC	Agar	SU	0.22 cfs	fwp & rec	1 well-Inyan Kara Formation	wi, 2 special
6432-3	Heron Cove, Inc.	Brookings	BG	12 AF	5.1 ac & com	Runoff & 1 well-Pleistocene Unknown	2 special